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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/131,051 08/07/98 JAMIESON

D NTL-3.2.035/

EXAMINER

TM02/1022

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ART UNIT

PAPER NUMBER

2153

DATE MAILED:

10/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/131,051

Applicant(s)

Jamieson et al

Examiner

Kenneth Fields

Art Unit

2153



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Aug 10, 2001

2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-14 is/are pending in the application.

4a) Of the above, claim(s) 11-14 is/are withdrawn from consideration

5) ☐ Claim(s) is/are allowed.

6) ☒ Claim(s) 1-3 and 5-9 is/are rejected.

7) ☒ Claim(s) 4 and 10 is/are objected to.

8) ☐ Claims are subject to restriction and/or election requirement

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. .

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). .

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). .

20) ☐ Other:

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawafuji et al (US 5,999,536).

Kawafuji discloses a virtual private network which enables private communications, over a network, between at least two private networks comprising: a first router coupled to the network and configured to dynamically distribute first router VPN information across the network, wherein the first router VPN information includes a VPN identifier which is assigned to said first router (col. 9, line 49 - col. 10, line 24); a second router coupled to the network and configured to dynamically distribute second router VPN information across the network; wherein said second router VPN information includes a VPN identifier which is assigned to said second router (col. 9, line 49 - col. 10, line 24); and wherein said VPN identifier assigned to said first router is the same as said VPN identifier assigned to said second router (the identifiers will be the same when packets are being distributed between terminals on the same VPN). Kawafuji further discloses a first private network adaption device (terminal) which is selectively coupled to the first router and

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a second private network device (terminal) which is selectively coupled to the second router, wherein the private network adaptation devices may communicate with one another.

Kawafuji does not disclose a Multiprotocol Label Switched (MPLS) type network wherein routers establish switched paths between one another. Multiprotocol Label Switching is a standards-approved technology for speeding up network traffic flow and making it easier to manage. MPLS involves setting up a specific path for a given sequence of packets, identified by a label put in each packet, thus saving the time needed for a router to look up the address to the next node to forward the packet to. The routers inherently establish switched paths between one another. MPLS is called multiprotocol because it works with IP, ATM, and frame relay network protocols. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the communication system as disclosed by Kawafuji upon a Multiprotocol Label Switched network, thereby providing a communication system which speeds up network traffic, makes it easier to manage and has the ability to utilize a variety of communication protocols.

Kawafuji discloses a virtual private network which enables communications over a network but is silent regarding label switched paths which comprise multipoint-to-point paths or multipoint-to-multipoint paths. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the network communication system as disclosed by Kawafuji with multiple multipoint-to-point paths as well as multipoint-to-multipoint paths,

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thereby providing the communication system of Kawafuji the ability to transfer data packets utilizing unicast as well as multicast transmissions.

*Response to Arguments*

3. Applicant's arguments filed 8/10/01 have been fully considered but they are not persuasive.

Applicant asserts that Kawafuji does not disclose “dynamically distributing” VPN information from a first router to a second router. Specifically, applicant asserts that in Kawafuji, “[t]he ID numbers of the VLANs and the port numbers that correspond to respective IP address are *registered in advance* in the memory table 23' of each router.”

The Examiner agrees that the ID numbers and port numbers are registered in advance. However, the Examiner maintains that Kawafuji reads on the claim language. The claims set forth “a first router ... configured to dynamically distribute ... VPN information” and “a second router ... configured to dynamically distribute ... VPN information.” Kawafuji states at column 9, lines 59-63:

“The packet whose MAC header portion has been updated by the second routing section 30 is sent to a terminal apparatus or another router through an interface section of the switching hub, together with the ID number of the corresponding VLAN and the port number.”

The Examiner interprets the above passage as equating to the limitation of “dynamically” distributing VPN information. Applicant asserts that “the second routing section does not update the ID number of the corresponding VLAN and port number” because both the ID number port

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number are “registered in advance in the memory table 23' of the router.” However, this argument is not commensurate with the claim language.

The claims do not require that the a routing section update the ID number of a corresponding VLAN and port number. If Applicant intends this limitation to be included within the claims, language should be added to the claims which sets forth such a feature. The present claim language requires that the ID number and port number be dynamically distributed. As Kawafuji discloses sending a packet, together with the ID number of the corresponding VLAN and the port number, the Examiner maintains that such disclosure reads on the limitation of “dynamically distributing” VPN information.

It appears as though Applicant may be placing too much emphasis on the term “dynamically” within the claims. The term “dynamically” is a broad term and has been interpreted as such by the Examiner. During patent examination, the pending claims must be given the broadest reasonable interpretation consistent with the specification. A broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified.

Applicant further asserts that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the communication system as disclosed by Kawafuji upon a Multiprotocol Label Switched network. Specifically, Applicant asserts that the Examiner's assertion amounts to applying an “obvious to try” standard to determine obviousness. The examiner, however, is not contending that it would be obvious to try the

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proposed modification. The denigration of this rationale is recognized. See In re Antonie, 195 USPQ 6 (CPA 1977). The examiner's position is rather that the invention would have been obvious to do. Thus, the examiner maintains the position that one of ordinary skill in the art would have been motivated by Kawafuji's teaching to utilize the system of Kawafuji upon a Multiprotocol Switched network.

Multiprotocol Label Switching is a standards-approved technology for speeding up network traffic flow and making it easier to manage. MPLS involves setting up a specific path for a given sequence of packets, identified by a label put in each packet, thus saving the time needed for a router to look up the address to the next node to forward the packet to. The routers inherently establish switched paths between one another. MPLS is called multiprotocol because it works with IP, ATM, and frame relay network protocols. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the communication system as disclosed by Kawafuji upon a Multiprotocol Label Switched network, thereby providing a communication system which speeds up network traffic, makes it easier to manage and has the ability to utilize a variety of communication protocols.

***Allowable Subject Matter***

4. Claims 4 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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*Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Fields whose telephone number is (703) 308-4954.

The fax phone number for this art unit is (703) 305-7201. Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the technology center receptionist whose telephone number is (703) 305-3900.

*KF*

Kenneth Fields  
October 9, 2001



Dung C. Dinh  
Primary Examiner